SUPREME COURT OF THE UNITED STATES

LORDS LANDING VILLAGE CONDOMINIUM COUNCIL OF UNIT OWNERS, PETITIONER
v. CONTINENTAL INSURANCE COMPANY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 96–1033. Decided June 2, 1997

CHIEF JUSTICE REHNQUIST, with whom JUSTICE BREYER joins, dissenting.

In *Thomas* v. *American Home Products, Inc.*, 519 U. S. ___ (1996), the Court granted, vacated, and remanded a decision of the Court of Appeals for the Eleventh Circuit for reconsideration in the light of a decision of the Georgia Supreme Court that was handed down after the Court of Appeals had denied a petition for rehearing. The lower court there had had no opportunity to consider the impact of the new state law decision.

Here, by contrast, *Sheets* v. *Brethren Mutual Ins. Co.*, 342 Md. 634, 679 A. 2d 540 (1996), was expressly considered by the court below. Although *Sheets* was not brought to the attention of the Fourth Circuit until after it had rendered its decision and denied rehearing, petitioner raised it nonetheless before that court in a motion to recall or stay the mandate. Petitioner's motion did not fall on deaf ears; indeed, the Fourth Circuit went to the unusual lengths of requesting a response to the motion and then, after the response was received, issuing a written order rejecting the claim. The only question discussed in that order is whether "*Sheets* should have required a different disposition of this case than the [original] disposition." App. to Pet. for Cert. 10a. And the court resolved that question, concluding

"[w]e are of [the] opinion the said petition and motions are without merit."* *Id.*, at 11a.

If this Court has, without any briefs on the merits, concluded that the Court of Appeals' refusal to alter its opinion in the light of *Sheets* was wrong, it should either set the case for argument or summarily reverse. True, this would require the investment of still more time and effort in a case that is in the federal courts only by reason of diversity of citizenship, see *Thomas*, *supra*, at ___ (REHNQUIST, C. J., dissenting), but it would have the virtue of explicitly telling the Court of Appeals how to dispose of the case. The Court's decision to grant, vacate and remand in the light of *Sheets*, on the contrary, is muddled and cryptic. Surely the judges of the Court of Appeals are, in fairness, entitled to some clearer guidance from this Court than what they are now given.

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*Although it is possible to construe this statement as being based on the procedural impropriety of raising such an issue on a motion to recall the mandate, such a construction is nowhere suggested in the order, nor is it the natural implication of the language ("without merit") used by the court below. I see no reason for us not to take the Fourth Circuit's order at face value.